

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WILLIAM R. FLETCHER,)	
Plaintiff,)	
v.)	
)	Case No. 06 C 00842
CHICAGO RAIL LINK, L.L.C.,)	
Defendant/Third Party Plaintiff,)	Judge Kennelly
)	
v.)	
)	
AUTOMASTERS TIRE AND SERVICE)	
CENTER,)	
Third Party Defendant.)	

**MOTION TO DISMISS THIRD PARTY CLAIMS FOR CONTRIBUTION
AND FOR ORDER ENTERING FINAL AND APPEALABLE JUDGMENT
ON DENIAL OF POST TRIAL MOTION**

Defendant, CHICAGO RAIL LINK, L.L.C. (“CRL”), and former Defendants, CSX TRANSPORTATION, INC. (“CSXT”), CSX INTERMODAL, INC. (“CSXI”) and CSX INTERMODAL TERMINALS, INC. (“CSXIT”), by and through their attorneys, Daniel J. Mohan and Kevin W. Baldwin of Daley Mohan Groble, P.C., hereby move this Court pursuant to FRCP Rule 58, and pursuant to the order of the United States Court of Appeals for the Seventh Circuit dated January 28, 2008, for the entry of an order affirmatively dismissing the Third-Party Complaints filed by CSXT, CSXI and CSXIT, and entering a Final and Appealable Judgment as to all claims and parties in this matter. In support thereof, Defendants state as follows:

1. On May 1, 2007, prior to commencement of the trial of the underlying matter, the parties entered into a stipulation dismissing CSXT, CSXI and CSXIT from the matter. (A copy of the stipulation, filed on May 1, 2007, appearing as District Court docket number 68, is attached hereto as Exhibit “A” and incorporated herein.)

2. On May 3, 2007, a minute order was entered dismissing Defendants CSX Transportation, Inc., CSX Intermodal, Inc., and CSX Intermodal Terminals, Inc. from the matter pursuant to the parties' stipulation. (A copy of the order, entered on May 3, 2007, appearing as District Court docket number 71, is attached hereto as Exhibit "B" and incorporated herein.)

3. Pursuant to the stipulation, all claims between the Plaintiff and Defendants CSXT, CSXI and CSXIT were dismissed and are no longer pending in the instant matter.

4. Since Plaintiff's claims against CSXT, CSXI and CSXIT, which were based upon negligence, were no longer pending, the claims by CSXT, CSXI and CSXIT for contribution filed against the Third-Party Defendant, Automasters Tire and Service Center ("Automasters"), became moot and it was assumed the order dismissing CSXT, CSXI and CSXIT from the case worked to dismiss the corresponding contribution claims of CSXT, CSXI and CSXIT against Automasters.

5. This matter proceeded to trial, and on August 17, 2007, judgment was entered on Plaintiff's complaint against CRL, and on CRL's third-party complaint for contribution in favor of Automasters. CRL filed a post-trial motion on August 31, 2007, which was denied by order entered on October 26, 2007. Thereafter, CRL filed a notice of appeal on November 16, 2007, and the case was docketed in the United States Court of Appeals for the Seventh Circuit as case number 07-3816.

6. On January 28, 2008, the Seventh Circuit issued an order dismissing the appeal for lack of jurisdiction, stating simply that the appeal was premature due to the lack of an order in the District Court disposing of the third-party claims by CSXT, CSXI and CSXIT against Automasters. (A copy of the order is attached hereto as Exhibit "C" and incorporated herein.)

7. Since Plaintiff's claims against CSXT, CSXI and CSXIT have been dismissed with prejudice, the third-party claims of CSXT, CSXI and CSXIT against Automasters are moot.

Since CRL has been prevented from appealing the judgment and denial of its post trial motion, as it has a right to do under Rule 3 of the Federal Rules of Appellate Procedure, it therefore requests that this Court enter an order declaring that the claims of CSXT, CSXI and CSXIT against Automasters are disposed of as moot, final and appealable order disposing of all claims as to all parties in this matter.

WHEREFORE, Defendant, CHICAGO RAIL LINK, L.L.C., and former Defendants, CSX TRANSPORTATION, INC., CSX INTERMODAL, INC. and CSX INTERMODAL TERMINALS, INC., hereby pray that an order be entered affirmatively dismissing the Third-Party Complaints filed by CSXT, CSXI and CSXIT, and incorporating the Court's order denying CRL's post trial motion into a final and appealable judgment as to all claims and parties in this matter.

Respectfully Submitted,
CHICAGO RAIL LINK, L.L.C.

s/ Daniel J. Mohan
By One of Its Attorneys

Daniel J. Mohan 6187721
Kevin W. Baldwin 6277070
Daley Mohan Groble, P.C.
Attorneys for Defendants
55 West Monroe Street, Suite 1600
Chicago, Illinois 60603-5001
312-422-9999
312-422-5370 Fax

CERTIFICATE OF SERVICE

I, Kevin W. Baldwin, an attorney, hereby certify that I caused the foregoing Defendants' Motion to Dismiss Third-Party Claims for Contribution to be served on the attorneys of record and/or parties listed below via electronic filing using CM/ECF, or via U.S. Mail, proper postage prepaid, as indicated:

William J. McMahon
Hoey & Farina
542 South Dearborn Street, Suite 200
Chicago, IL 60605
Attorney for Plaintiff
(via electronic service)

John W. Grove
Maisel & Associates
200 North LaSalle Street, Suite 200
Chicago, IL 60601
Attorney for Automasters Tire & Service Center
(via electronic service)

on February 7, 2008.

s/ Kevin W. Baldwin
Kevin W. Baldwin
Attorney for Defendants

Daniel J. Mohan 6187721
Kevin W. Baldwin 6277070
Daley Mohan Groble, P.C.
Attorneys for Defendants
55 West Monroe Street, Suite 1600
Chicago, Illinois 60603-5001
312-422-9999
312-422-5370 Fax